# Dato' Oon Ah Baa @ Boon Pak Leong & Ors v Eagle & Pagoda Brand Teck Aun Medical Factory Sdn Bhd & Ors (2)

HIGH COURT (PULAU PINANG) — COMPANIES WINDING UP NO 28–74 OF 2003 (3)
KAMALANATHAN RATNAM J
16 MARCH 2004

*Civil Procedure — Pleadings — Striking out, application for — Winding up petition — Whether abuse of process of the court — Whether any collateral purposes in filing petition — Whether there was a question of disputed debt*

*Companies and Corporations — Winding-up — Petition — Application to strike out petition — Allegations of oppression and mismanagement by petitioner — Whether application should be struck out — Companies Act 1965 s 218*

Two brothers and their families took out winding up proceedings against the first respondent company and another brother and his family under s 218 of the Companies Act 1965 for oppression of the minority share holders. In an earlier judgment, (see *Dato' Oon Ah Baa @ Boon Pak Leong & 5 Others v Eagle & Pagoda Brand Teck Ann Medical Factory Sdn Bhd & 5 Others* [2004] 1 AMR 354), the court found as a fact that the respondents had indeed opened a secret account, as alleged by the petitioner and into which they had been depositing various sums received as sales of the first respondent's goods and out of which secret accounts the respondent and his family were siphoning out monies for their personal use. The court then ordered the appointment of an interim receiver and manager as prayed for until the hearing of the winding-up petition. An application for stay of the interim appointment was refused by both the court and the Court of Appeal. The respondents also sought an order to strike out the winding up petition pursuant to O 18 r 19(1)(b) and/or (d) of the Rules of the High Court 1980 ('the RHC') and/or under the inherent jurisdiction of the court for want of compliance with r 26 of the Companies (Winding Up) Rules 1972 where the thrust of their contention was that the application was based on abuse of process.

**Held**, dismissing the application:

(1) There was nothing to prevent a party from issuing a writ and at the same time proceeding with winding up proceedings. In fact the proven status of both proceedings showed that the petitioners have been able to stem the outflow of funds by the interim appointment of the receivers and managers in the winding up proceedings. There was no collateral purpose in this case. The petitioners have alleged oppression and that was the only purpose for presenting this winding up petition (see para 30).

(2) Whether this case was one of an abuse of process, must be seen by looking into the particular and individual circumstances of the case. Based on the facts found in the earlier judgment, even after the petitioners had filed a writ and the parties had obtained an order before the learned judge hearing the civil suit, the respondents breached the terms by

only issuing cheques for and on their behalf and refused to issue cheques in settlement of the plaintiffs' payments for arrears of their car loans, thus causing the plaintiffs to refuse to co-sign the cheques for clearance. To circumvent the need to ask the petitioners herein to co-sign the cheques the respondents opened a secret account into which they poured in receipts of payments of sales of the first respondent's goods and secretly siphoned out the funds for their own use. It was to stem this abuse that the petitioners filed the winding up petition (see para 32).

(3) There was no question of any disputed debt being an issue in this case. The petitioners were seeking their entitlement; nothing more nothing less. They were paid their dues all along even during the patriach's lifetime and afterwards. It was only when the respondents took over as majority share holders that they refused to pay the petitioners what they had been getting all along. There was therefore no question of a disputed debt in this case (see para 34).

(4) The filing of this winding up proceedings was because of allegations of oppression and mismanagement. The plea of oppression could not constitute collateral purpose. The plea of oppression was the very purpose why a winding up petition was filed which was to protect the interest of the petitioners and their families and to secure remedies for wrongs done to them (see para 36).

[**Bahasa Malaysia summary**

Dua orang beradik dan keluarga-keluarga mereka telah memulakan prosiding penggulungan terhadap syarikat responden pertama dan satu beradik lagi dan keluarganya di bawah s 218 Akta Syarikat 1965 untuk penindasan ke atas pemegang syer minoriti. Di dalam penghakiman terdahulu, (lihat *Dato' Oon Ah Baa @ Boon Pak Leong & 5 Others v Eagle & Pagoda Brand Teck Ann Medical Factory Sdn Bhd & 5 Others* [2004] 1 AMR 354), mahkamah memutuskan sebagai fakta bahawa responden-responden telah membuka satu akaun rahsia, seperti yang dikatakan oleh pempetisyen dan di dalam mana mereka telah mendepositkan jumlah wang yang diterima sebagai jualan barang-barang responden pertama dan daripada mana jumlah-jumlah rahsia responden pertama dan keluarganya menyalurkan wang itu untuk kegunaan peribadi mereka. Mahkamah kemudiannya memerintahkan perlantikan seorang penerima dan pengurus interim seperti yang dipohon sehingga pendengaran petisyen penggulungan. Satu permohonan untuk pengantunggan pelaksanaan perlantikan interim telah ditolak oleh mahkamah dan Mahkamah Rayuan. Responden-responden juga memohon satu perintah untuk membatalkan petisyen penggulunggan menurut A 18 k 19(1)(b) dan/atau (d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dan/atau budi bicara sedia ada sebab ketidakpatuhan k 26 Kaedah-Kaedah (Penggulungan) Syarikat 1972 di mana hujuhan mereka adalah permohonan itu berdasarkan penyalahgunaan proses.

**Diputuskan**, menolak permohonan itu:

(1) Tiada apa-apa yang menghalang parti daripada mengeluarkan writ dan pada masa yang sama terus dengan prosiding penggulunggan. Status

terbukti kedua-dua prosiding menunjukkan bahawa pempetisyen-pempetisyen dapat membendung aliran keluar wang oleh perlantikan interim penerima dan pengurus di dalam prosiding penggulunggan. Tiada tujuan kolateral di dalam kes ini. Pempetisyen-pempetisyen telah mengatakan penindasan dan itu adalah tujuan untuk mengemukakan petisyen penggulunggan ini (lihat perenggan 30).

(2) Sama ada kes ini satu kes penyalahgunaan proses mesti dilihat daripada keadaan-keadaan khusus dan individu kes. Berdasarkan fakta-fakta di dalam penghakiman terdahulu, walaupun selepas pempetisyen-pempetisyen telah memfailkan writ dan parti-parti telah mendapatkan perintah daripada hakim yang arif yang mendengar guaman sivil, responden-responden telah melanggar terma-terma dengan hanya mengeluarkan cek-cek bagi pihak mereka sendiri dan enggan mengeluarkan cek-cek untuk menjelaskan bayaran plaintif-plaintif untuk tunggakan pinjaman kereta mereka, menyebabkan plaintif-plaintif enggan menandatangani bersama cek-cek itu untuk penjelasan. Untuk memintasi keperluan untuk meminta pempetisyen-pempetisyen untuk menandatangani bersama cek-cek responden-responden telah membuka akaun rahsia di mana mereka meletakkan resit-resit bayaran jualan barang responden pertama dan telah menyalurkan secara rahsia wang untuk kegunaan mereka sendiri (lihat perenggan 32).

(3) Tidak terdapat persoalan tentang sebarang hutang yang dipertikaikan sebagai isu di dalam kes ini. Pempetisyen-pempetisyen hanya memohon hak mereka; tidak lebih daripada itu. Mereka telah dibayar selama ini dan juga semasa kehidupan bapa mereka dan selepas itu. Ia hanya selepas responden-responden mengambil alih sebagai pemegang syer majoriti mereka enggan membayar pempetisyen-pempetisyen apa yang pempetisyen-pempetisyen dibayar selama ini. Oleh itu tiada persoalan hutang yang dipertikaikan di dalam kes ini (lihat perenggan 34).

(4) Prosiding penggulunggan ini difailkan sebab penindasan dan salah urus yang dikatakan. Rayuan penindasan tidak dapat menjadi tujuan kolateral. Rayuan penindasan merupakan tujuan utama pemfailan permohonan petisyen penggulunggan iaitu untuk melindungi kepentingan pempetisyen-pempetisyen dan keluarga-keluarga dan untuk mendapatkan remedi-remedi untuk perbuatan salah ke atas mereka (lihat perenggan 36).]

**Notes**

For cases on striking out of pleadings, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) para 4893.

For cases winding up petitions under s 218 of the Companies Act 1965, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1229–1249.

For striking out pleadings and actions see 1 *Halsbury's Laws of Malaysia*, para [10.6-069].

For petitions in companies winding up, see 6 *Halsbury's Laws of Malaysia*, para [110.018]–[110.061].

**Cases referred to**

*Dato' Oon Ah Baa @ Boon Pak Leong & 5 Others v Eagle & Pagoda Brand Teck Ann Medical Factory Sdn Bhd & 5 Others* [2004] 1 AMR 354 (refd)
*Dato' Oon Ah Baa @ Boon Pak Leong & 5 Others v Eagle & Pagoda Brand Teck Aun Medical Factory Sdn Bhd & 5 Others* Penang High Court Companies Winding Up No 28–74 of 2003 (refd)
*Gold Hill Mines, re* [1883] 23 Ch D 210 (refd)
*Goldsmith v Sperrings Ltd & Ors* [1977] 1 WLR 478 (refd)
*Jasa Keramat Sdn Bhd & Anor v Monatech (M Sdn Bhd* [1999] 4 MLJ 637 (refd)
*Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1 (refd)

**Legislation referred to**

Companies Act 1965 s 218
Companies (Winding Up) Rules 1972 r 26
Rules of the High Court 1980 O 18 r 19(1)(b), (d), O 30 r 2(1)

*John Khoo Boo Lai (Ismail, Khoo & Associates) for the petitioners.*
*Bill Davidson (Karin Lim Ai Ching and Lim Hock Siang with him) (Presgrave & Matthews) for the respondents.*
*R Vinayaga for the receivers and managers.*

**Kamalanathan Ratnam J**:

*Facts*

**[1]** The detailed facts relating to this case have been adequately stated by me in an earlier related application (see *Dato' Oon Ah Baa @ Boon Pak Leong & 5 Others v Eagle & Pagoda Brand Teck Ann Medical Factory Sdn Bhd & 5 Others* [2004] 1 AMR 354).

**[2]** In any case in order to save time rather than cross-referring, the bare facts are that two brothers and their families took out winding up proceedings against the first respondent company and another brother and his family under s 218 of the Companies Act 1965 for oppression of the minority share holders.

**[3]** The respondents filed an application seeking certain validation orders. I heard the said application and dismissed the same (see unreported judgment *Dato' Oon Ah Baa @ Boon Pak Leong & 5 Others v Eagle & Pagoda Brand Teck Aun Medical Factory Sdn Bhd & 5 Others* Penang High Court Companies Winding Up No 28–74 of 2003 dated 14 July 2003). Because of the need for certain acts to be done to maintain and run the company until I heard the winding up petition and since in the petition itself there was a prayer seeking the appointment of an interim receiver and manager, and since I had dismissed the respondents' application for the validation orders, and since there were very serious allegations by the petitioners in their various affidavits that the respondents who were in the majority were siphoning funds and had even opened a secret account into which they were directing receipts of proceeds of sales of the company's goods and from

which secret account the respondent and his family were withdrawing monies for their own personal use and since there were allegations that the petitioners were themselves being deprived of use of funds they were entitled to, I heard the prayer for the appointment of receivers and managers which was a specific item pleaded in the petition.

**[4]** After many affidavits were filed by both parties I heard submissions both orally and also received numerous written submissions boosting their respective oral submissions, tendered by both parties, I reserved judgment and after much deliberation I delivered a 120 page written judgment in which I found as a fact that the respondents had indeed opened a secret account and into which they had been depositing various sums received as sales of the first respondent's goods and out of which secret accounts the respondent and his family were siphoning out monies for their personal use. One of the grounds on which I found so was the respondents' admission in their affidavit, and in the submission of their counsel, that this was the 'modus operandi' of the petitioners themselves, when they were in power. I held that if that was so, the respondents herein ought to have taken a similar action as the petitioners have done. In any case the petitioners had denied that they had done so; whereas the respondents had admitted doing so and had not specifically denied the allegations of operating a secret account and siphoning the monies (see the findings in the reported judgment).

**[5]** I then ordered amongst others the appointment of an interim receiver and manager as prayed for until the hearing of the winding up petition.

**[6]** Dissatisfied with my decision the respondents have appealed to the Court of Appeal. In the meantime the respondents applied orally for a stay of my orders. I directed them to file a written application because I was of the view that in my written judgment I had clearly found that the respondents were systematically siphoning funds and depleting monies received from the sales and it was my view that the oral application was not sufficient. Perhaps in the written application if the respondents could show some new grounds not canvassed so far, I could consider a stay.

**[7]** Dissatisfied with this decision the respondents rushed to the Court of Appeal and obtained a stay of my orders pending the hearing by me of the written application for stay which the respondents had filed in the meantime.

**[8]** On 12 January 2004 the respondents applied by way of encl 113 for a stay of my order pending the hearing and disposal by the Court of Appeal of the respondents' appeal against my earlier order granting various orders including the appointment of an interim receiver and manager.

**[9]** After hearing full arguments from both sides, I dismissed the respondents' application for a stay. Mr Bill Davidson for the respondents relied on the recent decision of the Federal Court namely *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1 where the court had held that the fact that the appeal would be rendered nugatory if stay was refused was a common example of special circumstances which the court in considering a stay application ought to consider.

**[10]** Whilst there is no requirement for me to give my reasons for dismissing this stay application because the respondents had not appealed against this decision as stated in their notice of appeal, yet it is necessary for me to state that this was precisely the reason why I refused a stay because a stay of my order appointing the receiver and manager would render nugatory the petition filed herein because I have specifically found that the respondents were siphoning monies and operating a secret account. A stay would therefore be inappropriate in the circumstances.

**[11]** In any event subsequent to my dismissal of the stay application the respondents applied by way of a motion, to the Court of Appeal for a stay. After hearing submissions the Court of Appeal has dismissed the application for stay of the interim appointment of the receiver and manager although it had granted a stay against my order allowing for the back-dated claims due to the applicants.

**[12]** After I had dismissed the respondents' encl 113 which is the application for stay, I stated in open court, that since the respondents had not denied the existence of a secret account and since the defence of the respondents was that even the petitioners were doing the same, that is, siphoning of monies when they were in power and since this court had found that this is an urgent case, I was therefore ordering the appointed receivers and managers to move in as of that date of my order and to take over and act pursuant to my main order dated 3 December 2003.

**[13]** Because of the seriousness of the whole issue and for the urgent need for the receivers and managers to take control of the assets and receive monies due to the first respondent, I had thought it fit to order the receivers and managers to go in as of that date.

**[14]** As soon as I had made that order Mr Vinayaga who appeared for the receivers and managers stood up and asked for security for costs to be dispensed with since the receivers and managers were of the view that the first respondent was solvent. I then granted the said dispensation. At this stage Mr Bill Davidson for the respondents stood up and requested that I record his clients' objection on the basis that there was no written application made.

**[15]** I recorded in my notes the fact that since I saw the urgency of the matter, I was of the view that there was no need for a written application as the court accepted the oral application.

**[16]** Since O 30 r 2(l) of the Rules of the High Court 1980 ('the RHC') states 'unless the order otherwise directs', I exercised my discretion and appointed the receivers and managers without any security on the basis also that the appointed receivers and managers are well known and renowned as found by me in my main judgment. The receivers and managers would have to apply to this court for directions in any event pursuant to O 30 of the RHC. I found that there was an urgent need to grant a dispensation of security in the circumstances of this case. The respondents have appealed against this order.

*Application to strike out the petition (encl 10)*

**[17]** Enclosure 10 filed by the respondents contained the following prayers:

(1) An order that the above winding up petition be struck out pursuant to O 18 r 19(1)(b) and/or (d) of the Rules of the High Court 1980 and/or under the inherent jurisdiction of the court; or alternatively;

(2) An order that all proceedings under the above winding-up petition be stayed permanently under the inherent jurisdiction of the court;

(3) Costs;

(4) Further or other orders and reliefs as this honourable court may deem fit and proper.

**[18]** As for the stay pleaded in prayer (2) since I have already heard and disposed of an application for stay, pending hearing of the appeal against my earlier decision, Mr Bill Davidson for the respondents correctly proceeded to submit only in respect of prayer (1) of encl 10.

**[19]** The respondents also filed encl 28 and sought the following prayers:

(1) An order that the above winding up petition be struck out pursuant to O 18 r 19(1)(b) and/or (d) of the Rules of the High Court 1980 and/or under the inherent jurisdiction of the court for want of compliance with r 26 of the Companies (Winding Up) Rules 1972;

(2) Costs;

(3) Further or other orders and reliefs as this honourable court may deem fit and proper.

**[20]** Since encl 28 is a repetition of encl 10 I considered both encll 10 and 28 together and this was agreed to by both counsel. From the outset I indicated to both counsel that I would only hear fresh issues which had not been argued before me in the earlier enclosures especially issues which I have covered in my 120 page judgment which is under appeal.

**[21]** With his usual frankness Mr Davidson conceded that 'there are no further fresh issues other than what had been argued and upon which this court has given a written judgment'.

**[22]** However he contended that the thrust of encl 10 was that the application was based on abuse of process. This court then pointed out to him that this issue too was properly canvassed and argued and a considered judgment delivered.

**[23]** However Mr Davidson indicated that he had a fresh bundle of authorities that he wished to refer to this court on abuse of process.

**[24]** During the course of his submission Mr Davidson made a startling statement. He contended that when the Court of Appeal heard the respondents' application for a stay of my order appointing receivers and managers, the

Court of Appeal did not look into this court's 120 page judgment which was indeed before that court and wherein this court had found that there was a secret account opened by the respondents and that they were siphoning monies out of that secret account. Mr Davidson said that the Court of Appeal did not look at my judgment and therefore did not go into the merits and that 'the determinative issue was whether in the minds of the court there would be a dissipation of the assets'.

**[25]** To my mind, since the Court of Appeal had after deliberation made an order that the receivers and managers ought to remain and thus refused the respondents' application for a stay of this order, clearly that superior court could not have come to such a specific decision without going into the facts as stated in the affidavits and reading the judgment of this court. Indeed it is totally unfair to that august court to suggest that the three learned judges had made up their minds without looking into the affidavits and this court's judgment. If the Court of Appeal had feared dispensation of assets they must have reached that conclusion not from guess work, not from rumours but from reading the facts presented by both sides and the conclusions arrived at by the High Court judge.

**[26]** Mr Davidson continued with his submission by laying down various arguments relating to abuse of process.

**[27]** Under general priciples Mr Davidson referred me to the case of *Goldsmith v Sperrings Ltd & Ors* [1977] 1 WLR 478 at p 489 wherein Lord Denning in his dissenting judgment described abuse of legal process as follows:

> In a civilized society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.

**[28]** The plaintiff an international company chairman and director sued the publishers, editor and the main distributor of a controversial but widely read fortnightly newspaper. Negotiations took place for settlement and certain terms were reached whereby the plaintiff could not impede the paper's future sales and would discontinue the action against the remaining distributors and release from their undertaking not to handle the paper, those with whom he had settled; but the negotiations broke down on another issue.

**[29]** The remaining distributors, represented by the principals' solicitors applied for an order that the actions against them should be stayed or dismissed as an abuse of the process of the court in that the plaintiff's purpose in pursuing actions against the distributors was said not to be to protect his reputation but for the collateral purpose of destroying the paper by cutting off its retail outlets. The master stayed the action, but on appeal,

A the judge with additional evidence before him, ordered the stay to be lifted. In dismissing this appeal the Court of Appeal held that the plaintiff in an action for libel had a cause of action against any distributor of the alleged libel, and it would be a denial of justice to stay such an action at an interlocutory stage, unless there was strong evidence to show that the plaintiff's purpose in bringing such actions was not the legitimate purpose of protecting and B vindicating his reputation but the collateral purpose of destroying the paper by cutting off its commercial outlets, and that such a collateral purpose would be an abuse of the process of the court. However the court found that the evidence, particularly that relating to the terms on which the plaintiff had offered to settle all disputes with the principals, made clear that his C purpose in all the litigation, including the actions begun against the secondary distributors, was to vindicate his reputation and prevent further anticipated attacks upon it. The Court of Appeal held that such a purpose could not be an abuse of the court's process.

**[30]** Similarly in the case before me and as held by me in my earlier D judgment there is nothing to prevent a party from issuing a writ and at the same time proceeding with winding up proceedings. In fact the proven status of both proceedings show that the petitioners have been able to stem the outflow of funds by the interim appointment of the receivers and managers in the winding up proceedings. There is no collateral purpose in this case before me. The petitioners have alleged oppression and that is the only purpose E for presenting this winding up petition.

**[31]** In *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637, Gopal Sri Ram JCA in delivering the judgment of the Court of Appeal said at pp 645–646 as follows:

F > Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends upon particular and individual circumstances. Where an action is found to be an abuse of the court's process, it may be struck out or stayed. If it is too late to do this, the party aggrieved may bring an action based upon G the tort of abuse of process.

**[32]** As rightly said by the learned judge whether this case is one of an abuse of process, must be seen by looking into the particular and individual circumstances of the case. Even after the petitioners had filed a writ and parties had obtained an order before the learned judge hearing the civil suit, H the respondents breached the terms by only issuing cheques for and on their behalf and refused to issue cheques in settlement of the plaintiffs' payments for arrears of their motorcar loans, thus causing the plaintiffs to refuse to co-sign the cheques for clearance. The findings of this court in the 120 page written judgment are relevant. To circumvent the need to ask the petitioners herein to co-sign the cheques the respondents opened a secret account into I which they poured in receipts of payments of sales of the first respondent's goods and secretly siphoned out the funds for their own use. It was to stem this abuse that the petitioners filed this winding-up petition. In the circumstances,

it is my judgment that the filing of this petition certainly is not an abuse of process. The respondents cited other cases in support of the proposition that where there is a collateral purpose for the filing of an action that would constitute abuse of process. As I have already found that there is no collateral purpose in this case there is no need for me to dwell upon the cases cited in support of that proposition.

**[33]** The respondents also referred to a line of cases which set this principle that if the debt is disputed then there should not be an order for winding up as the winding up proceedings could be seen as a collateral purpose for seeking payment of the debt. But that is not the case here.

**[34]** There is no question of any disputed debt being an issue in this case. In fact in the words of the respondents, the modus operandi of the petitioners when they were in power, was just the same that is there was an accusation that the petitioners were also syphoning funds like what the respondents had done. The petitioners were seeking their entitlement; nothing more nothing less. They were paid their dues all along even during the patriach's lifetime and afterwards. It was only when the respondents' took over as majority shareholders that they refused to pay the petitioners what they had been getting all along. There is therefore no question of a disputed debt in this case.

**[35]** The respondents reliance upon the case of *In re Gold Hill Mines* [1883] 23 Ch D 210 where the Court of Appeal held that the Petition to wind-up was an abuse of the process of the court, being brought to compel payment of a small debt which was bona fide disputed, and being unsupported by any evidence that the company was insolvent was totally unmeritorious.

**[36]** It is my judgment that the filing of this winding-up proceedings is because of allegations of oppression and mismanagement. I cannot agree that the plea of oppression could constitute collateral purpose. The plea of oppression is the very purpose why a winding up petition is filed. On the facts as found in my earlier judgment I am satisfied that this petition was not filed for any collateral purpose. It has been filed to protect the interest of the petitioners and their families and to secure remedies for wrongs done to them. Mr Davidson in his final round-up persuaded me to hold that this winding-up petition was presented for the collateral purpose of getting the receiver appointed so that the petitioners could get back into control of the company. It is surprising that the respondents could make such a submission. The receiver and manager must report back to the court which would supervise their function. To suggest that by the appointment of the receiver and manager the petitioners can take back control is mischievous as it suggests possible collusion between the petitioners and the receiver and manager. To make such a suggestion without any foundation is totally improper. Further the Court of Appeal itself has seen it prudent, in the words of Mr Davidson, to refuse a stay of the interim appointment of the receiver and manager to prevent dissipation of assets.

**[37]** This application to strike out the petition is totally devoid of merit. It therefore stands dismissed with costs.

*Application dismissed.*

Reported by Sally Kee Seok Meng